

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 382 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

BHAGWATIBEN MAFATLAL PATEL

Appearance:

1. Criminal Appeal No. 382 of 1990
MR SS PATEL A.P.P. for Petitioner No. 1
MR DK MODI for Respondent No. 1
MR MD MODI for Respondent No. 1

CORAM : MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 21/02/2003

ORAL JUDGEMENT

1. The State of Gujarat has approached this Court under Section 378 of the Code of Criminal Procedure

challenging the judgment and order of the acquittal passed by the learned Metropolitan Magistrate, Court no.8, Ahmedabad in Criminal case no.2/1998, whereby the present respondent is acquitted of the offences charged against him under Section 7(1) read with Sections 16 (1) A(i) of the Prevention of Food Adulteration Act, (hereinafter referred to as "the Act").

2. It is the case of the prosecution that a shop named "Umiya Dugdhalaya" is situated at Narol, (now under the limits of Ahmedabad Municipal Corporation). At the time when the sample was collected from the said shop i.e. on 11th February, 1986, it was not brought within the limits of Ahmedabad Municipal Corporation, but was outside it. The shop was in the name of one Patel Ghanshyam Mafatlal aged about 11 years, but it was being run by his mother Bhagwatiben i.e. present respondent. On 11th February, 1986, at about 7:45 a.m. the complainant of this case namely the Food Inspector was on his usual round and he visited the aforesaid shop and expressed his desire to purchase the milk which was being sold from that shop. He, thereafter, in the presence of two persons namely Shri K.V. Kathwani and Harjivandas Atmaram Patel purchased 700 millilitres of buffalo milk which was given to him by the respondent from the aluminium bucket placed in the shop containing the said milk. The Food Inspector paid Rs.2.80 paise towards the purchase price of the milk and obtain receipt from the respondent which was duly signed by her. Before that the Food Inspector had filled up form no.6 and after obtaining signatures therein, of the aforesaid two persons who acted as panchas and that of the respondent gave it to her. It was signed by the Food Inspector also. Before purchasing the milk it was stirred by the Food Inspector by means of a plunger and, thereafter, 700 millilitres of buffalo milk was given to him by the respondent. The milk was collected in a measure of 1 litre which was then filled in three bottles of equal size which were moistureless, odourless, clean and transparent. The Food Inspector also put 18 drops of formalin in each bottle and closed them with a cork. Thereafter, he applied seal of Gujarat State Food Health Authority F.I. no.6 with sealing-wax. He thereafter, packed the samples in accordance with the provisions of Prevention of Food Adulteration Rules and in particular Rules 14, 15 and 16 and drew panchnama simultaneously. Panchnama was thereafter read over to the panchas and their signatures were obtained. He, thereafter, went to his office and prepared Memorandum Form no.7 in six copies and on each of it he put his seal impression as well as signatures. He, thereafter, placed one bottle

containing sample of the milk alongwith Memorandum in a sealed cover and placed them in a wooden box. The said wooden box was, thereafter, despatched to the Public Analyst at Rajkot for analysis by the Registered post parcel. A copy of the seal impression alongwith copy of the Memorandum was sent separately with the forwarding letter to the Public Analyst by Registered Post A.D. The remaining two bottles were sent to the Local Health Authority alongwith two copies of the Memorandum, after properly packing them and putting the seal over it. Subsequently, he received the report from the Public Analyst, which showed that the aforesaid milk was adulterated one. He, therefore, prepared a complaint and initially placed it before the Local Health Authority, Ahmedabad (Rural) for obtaining his consent as required under Section 20 of the Act. However, by that time, the local area of Narol village was brought within Municipal Corporation limit, Ahmedabad City and hence, the Food Inspector was directed to approach the Local Health Authority meant for the city of Ahmedabad. The Food Inspector, therefore, approached the Medical Officer of the Health and Local Health Authority, Ahmedabad, Municipal Corporation and furnished to him the complaint with all other relevant papers to be placed before the Local Health Authority to enable him to grant its consent. It appears that the sanctioning Authority namely the Deputy Commissioner, Ahmedabad Municipal Corporation granted consent by writing "scrutinised and sanctioned" just below the draft of the complaint and put his signatures on the said. On receiving the consent from the concerned authority, the Food Inspector filed complaint in the Court of learned Metropolitan Magistrate, Ahmedabad on 13th January, 1988. After lodging the complaint, he forwarded a copy of the complaint alongwith the copy of the report of the analysis to the respondent and intimated her that if she so wished she could make necessary application within ten days from the receipt of the intimation to the concerned Magistrate. It appears from the record that an application was made by the respondent to get the samples of the offending article analysed by the Central Food Laboratory and in response to that one sample was sent to the said Laboratory. On receipt of the report of analysis from the Central Food Laboratory, it was found that the sample was adulterated one and contents of the fat and solid non fats did not conform to the prescribed standard laid down in the Act as well as the Rules. The learned Magistrate at Exh.4 recorded plea of the respondent on 22nd June, 1989 and upon her pleading not guilty to the charge, he proceeded with the Trial.

2.1. At the Trial, the prosecution examined Shri M.H. Patel the Food Inspector who has stated that on 11th February, 1986 at about 7:45 a.m. he had collected sample of the milk from the "Umiya Dugdhalaya" situated at Narol village. The milk was sold to him by the present respondent. After complying with all the formalities which have been stated in detail by him in the evidence, he had send one sample to the Public Analyst at Rajkot and the remaining two samples to the Local Health Authority. On receipt of the report from the Public Analyst declaring the sample to be adulterated one, he obtained necessary consent from the concerned Health Authority and lodged a complaint in the Court of learned Metropolitan Magistrate, Ahmedabad. He has also in detail stated the formalities which were complied with by him in accordance with the provisions of the Act as well as the Rules till the stage of lodging the complaint. According to him after lodging the complaint before the learned Magistrate, a copy of the complaint lodged alongwith the report were also sent to the respondent with written intimation that in case she desired to have the sample analysed by Central Food Laboratory, she should make an application within ten days to the learned Magistrate. In the cross-examination of this witness by the defence, he has stated that he had requested for obtaining consent of the Local Health Authority on the basis of the report of the Public Analyst. He has further stated that for obtaining consent he had initially approached the Local Health Authority meant for Ahmedabad Rural, but he was directed to approach the Local Health Authority of Ahmedabad Municipal Corporation since, at that time the area of Narol village was brought within the limits of Corporation. In the examination-in-chief, he has stated that he had personally approach the Medical Officer of Health and Local Health Authority, Ahmedabad, but in the cross-examination by the defence he has stated that so far the Local Health Authority is concerned he had not gone personally to obtain the consent but he had only forwarded the papers for obtaining the necessary consent.

2.2. The prosecution has also examined P.W.2 Kishorbhai Bhagwandas Kathwani at Exh.21 who acted as panch at the time of collecting the sample. In the examination-in-chief by the prosecution he has more or less deposed on the line of the Food Inspector which indicates that at the time of collecting the samples all the necessary formalities were complied with. In the cross-examination by the defence, he has stated that he did not remember whether on the label pasted on the bottle his signatures and that of the other panch were

obtained. He has further stated that the Food Inspector himself had filled the milk from the measure of 1 litre in the bottles and he himself had applied cork and sealed them. He has further stated that the procedure of pasting the label and wrapping the bottles etc., was done by the Food Inspector. He has however, denied the submission made by the defence that the panchnama was not recorded as per their dictation.

3. At the end of recording of the oral evidence, the circumstances appearing against the respondent were put to her in the further statement under Section 313 of the Cr.P.C. and it appears that by and large the defence was of general denial. As stated above, at the end of the trial, the learned Magistrate, held that the prosecution had failed to establish guilt of the respondent and acquitted her of all the charges which were levelled against her. It is against this judgment of acquittal, the State of Gujarat has approached this Court by filing this appeal.

4. Mr.S.S. Patel learned A.P.P. appearing for the appellant - State has submitted that the respondent has been acquitted solely on the ground that the sanctioning authority while granting consent under Section 20 of the Act has not applied its mind and has assigned no reason for grant of consent. According to Mr.Patel the sanctioning authority is under no obligation to examine the pros and cons of the case and he is not supposed to assign any reasons for granting consent. He has further submitted that when the learned Magistrate came to the conclusion that the offending article was adulterated, there was no reason why the respondent should have been acquitted. The reasons acquitted by the learned Magistrate is totally against the law laid down by the Apex Court. As against that Mr.Modi learned advocate for the respondent has supported the judgment and has vehemently urged that the consent granted by the concerned authority is absolutely defective and thereby the provisions of Section 20 have been violated and such consent cannot be considered to be a valid consent in the eye of law. He has, therefore, urged that on the basis of such defective consent, no prosecution can be lodged. Lastly, he has submitted that this appeal does not have any merit and it requires to be dismissed.

5. With a view to reappraise the evidence, I have carefully gone through the entire record and I have also considered the rival contentions. Since, the very controversy in the present case is regarding the validity of the consent, I will discuss the said issue first. On

perusal of the original record at Exh.1 which is draft of the complaint which was placed before the sanctioning authority by the Food Inspector shows that below it the Deputy Commissioner has written "scrutinised & sanctioned" and has also written something which is not at all legible on account of the rubber stamp of the Food Inspector applied over these words. I am, however, told that it is "scrutinised and sanctioned", except this, there does not appear to be anything else written. It is true, that the sanctioning authority while granting sanction is not required to assign any reason for its decision. However, from the consent in the instant case it transpires that the sanctioning authority before granting sanction has not taken into consideration all the relevant materials which is placed before him. The Apex Court in the case of Suresh H. Rajput v. Bhartiben Pravinbhai Soni reported in (1996) 7 S.C.C.199 has held that the sanctioning authority is not under any obligation to assign reasons since it is not required to consider the pros and cons of the case before granting consent to lodge the prosecution. However, in that case, the consent which was on the consideration of the Apex Court was in cyclostyled form which contained the following details :-

"I hereby give consent to the Food Inspector Shri
S.H. Rajput to prosecute

(name of the accused was mentioned in each case)

* * *

For contravening the provision of Prevention of
Food Adulteration Act, 1954 as alleged in above
report of the Food Inspector.

This consent is given after going through the
analysis report of the public analyst and other
pertinent papers and documents and the nature of
offence committed by the alleged offenders, as
required by Section 20 of the "Prevention of Food
Adulteration Act, 1954".

5.1. This would show that the cyclostyled form contained the details regarding the documents which were taken into consideration by the sanctioning authority. In light of that, the Apex Court said that if that is done it was enough and no further exercise was required to be carried out by the sanctioning authority by assigning reasons. However, in the present case, it is

not so. The consent of sanctioning authority contains only two words namely "scrutinised & sanctioned". These two words do not make any meaning. They do not show what documents have been considered by the sanctioning authority prior to granting sanction. It is in the evidence of Food Inspector, what documents were forwarded to the sanctioning authority. However, no reference has been made by the sanctioning authority about those documents. Obviously, the sanctioning authority has not been examined and, hence, there is no evidence on record to show that what material was taken into consideration by him. In the similar circumstances this Court (Coram : Ms.R.M. Doshit, J) in the decision rendered in the case of Shankarlal Mangilal Jain v. State of Gujarat in Criminal Revision Application no.110 of 1994 dated 15th September, 2000 has laid down that even when the sanctioning authority is not required to assign reasons it is incumbent upon it to satisfy as to what material was taken into consideration by him before granting sanction. In absence of the same, the consent cannot be considered as a valid consent under Section 20 of the Act. It may be noted that, in that case the endorsement was "Scrutinised all the papers and sanctioned prosecution". In case on hand the situation is even worse inasmuch as except the two words nothing has been mentioned. In view thereof, I have no other alternative but to hold that the sanction/consent granted by the sanctioning authority is not a valid sanction as envisaged under Section 20 of the Act. The acquittal granted by the learned Magistrate therefore, does not require any interference by this Court. Since on this ground alone, this appeal does not succeed. I am not entering into any other aspects of the case. The appeal has, therefore, no merit and it is dismissed. The appeal is, therefore, dismissed.

[AKSHAY H. MEHTA, J.]

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